

State of the Judiciary, Jefferson City, January 2020

22 January 2020

*This is the written draft from which George W. Draper III,
chief justice of the Supreme Court of Missouri,
delivered his State of the Judiciary address Wednesday morning, January 22, 2020,
during a joint session of the Missouri General Assembly in Jefferson City, Missouri.*

Lieutenant Governor Kehoe, Secretary of State Ashcroft, Treasurer Fitzpatrick, Attorney General Schmitt, President Pro Tem Schatz, Speaker Hahr, members of this 100th General Assembly, the executive branch and the judicial branch. This opportunity signifies the ultimate cooperation between our branches, tasked with delivering good government and justice for the people we serve. On behalf of my colleagues and myself, we are honored to be here and welcome this time to inform you of the State of your Judiciary.

Bicentennial

History is the tie that binds, and in that regard, let me begin by telling you a bit of my history. I am the great-grandson of a North Carolina slave girl and a union soldier on my mother's side, and a dark-skinned black man from Florida and third-generation German immigrant woman from New Jersey on my father's side. My parents met in college at Howard University in Washington, D.C. They came to Missouri in 1949 so my father could teach at Lincoln, the "separate but equal" law school this legislature had created a decade earlier for Negroes. Then, and as chief of the criminal division in the attorney general's office in the 1950s, he was prevented from dining in certain restaurants here in Jefferson City. This phenomenon was not surprising – after all, our state entered the union as a slave state, via the 1821 Missouri Compromise, and our courts were the genesis of the infamous Dred Scott decision that precipitated the civil war just 40 years later.

Since then, there has been great change, and this year, we celebrate the bicentennial of our Supreme Court. In fact, our Court has instituted a "bicentennial minute" into our conferences. I will share a few highlights with you today.

The first constitution, adopted in July 1820, created for us a three-member Supreme Court. By the way, so coveted was the position that, of the first three individuals Governor Alexander McNair sought to appoint to our now prominent bench, only one accepted – the other two said “no thank you.”

Much has changed over the past two centuries. Rather than “riding the circuit” and meeting in courthouses throughout the state, we now have a permanent home – our third, actually ... the red-brick building across the street – for which our Court’s first female clerk is overseeing restoration efforts. Early tools of our trade included quill and ink. Yet now we stream our sessions live and publish our decisions online. We are now a seven-member Court. Of the four women who have served on our Court, three are currently on its bench, and I am only the *second* African-American.

Historically and significantly, we are honored to have with us the *first* African-American to serve on our Court – and a former member of this great legislative body – now a federal district judge in St. Louis, I give you The Honorable Ronnie White. Please stand and be recognized, your honor. Thank you.

Although women of color have yet to serve on our Supreme Court, since 1983 several have been members of your state’s judiciary. A former member of that group is here today. An accomplished lawyer in her own right, having once served as general counsel for our Missouri Department of Corrections, my best friend since our law school days at Howard – and my wife of 40 years – The Honorable Judy Preddy Draper. Please help me welcome her this morning. I am also really proud to introduce you to the third generation of lawyers from our family – or, as she reminds me, the most highly educated member of our family – the deputy chief of staff to the St. Louis County prosecutor, our daughter, Miss Chelsea Westin Draper.

Circuit realignment

To bring you another “bicentennial minute,” you might be interested to learn that Missouri’s first constitution established only four circuit courts, each serving four to eight counties! Now our 114 counties and the city of St. Louis are divided into 46 judicial circuits, with our constitution requiring at least one judge in every county.

In 2013, through section 478.073, RSMo, this legislative body authorized the Judicial Conference of Missouri to determine what alteration, if any, is necessary for the geographic boundaries of the state’s current judicial circuits. Prior circuit adjustments had been made solely by this legislature.

I do not have to tell the members of this body how incredibly diverse our state is, from vibrant cities to glistening waterways to the hills and valleys of our Ozarks, and how unique the personalities can be of all our cities, towns and villages. To ensure input reflecting the judicial and geographic diversity of our state, we established a 16-member judicial realignment task force.

They have worked diligently over the past two years, making reasonable compromises, to bring to you an honestly workable circuit court realignment plan. Please join me in recognizing this very hard-working group!

The process was arduous, governed by the factors in section 478.073 to determine optimal circuit configuration. Key in the study was mapping various factors to determine if disparities exist between circuits with regard to workload, delay and travel, and how changes in circuit boundaries would affect any observed disparities. Two factors provided strong guidance for circuit realignment – excessive judicial travel and the location of a primary business center across current circuit boundaries. In the report you received last week, the task force recommended moving two counties, resulting in the realignment of only four circuits.

The first recommendation is to move Carter County from the 37th circuit, which now has four counties, to the 36th circuit, which now has two counties. Realigning these circuits will allow Carter County residents to conduct court business where they conduct all their other business – across the current circuit boundary in Poplar Bluff.

The second recommendation is to move Benton County from the 30th circuit, which now has five counties, to the 27th circuit, which now has three counties. The major reason for this recommendation is driving distance, as it now takes one hour and 40 minutes to drive from Warsaw on one end of the circuit to Marshfield on the other. Under the realignment, the 30th circuit's longest drive time would be 30 minutes faster. Less time behind a steering wheel means more time on the bench to serve our citizens.

This report is evidence that we are *all* here to serve the citizens of the great state of Missouri. In the words of Mark Twain:

I hate to hear people say this Judge will vote so and so, because he is a Democrat – and this one so and so because he is a Republican. It is shameful. The Judges have the Constitution for their guidance; they have no right to any politics save the politics of rigid right and justice when they are sitting in judgment upon the great matters that come before them.

As you examine the proposed realignment plan, please note that the Judicial Conference of Missouri – at its annual business meeting, held last fall pursuant to section 476.330, RSMo – endorsed and adopted the plan *without dissent*.

Court technology

As the example with the realignment report shows, some changes in our justice system have been facilitated by the legislature. But many are driven by the courts – and the public we serve.

Perhaps the most transformative of these changes has been technology. Missouri was among the very first states to institute court automation more than two decades ago, altering the way we do business and enhancing the public's ability to participate electronically in cases. They now can sign up for text or e-mail alerts about cases they are following; they can plead guilty and pay fines electronically; and soon we are piloting a new program to let people who have received a ticket file documents, message the prosecutor and submit a proposed sentencing agreement all from their mobile devices.

Let me take this opportunity to thank you for the \$2 million in funding you provided our court automation systems last session. The current court automation fee covers only a third of the funding needed to support our case management system, which runs on 25-year-old technology and is likely to reach the end of its meaningful life in as little as 18 months.

We are working hard to build a new system to replace it – we have completed state traffic, ordinance and associate criminal cases; nearly all St. Louis County municipal divisions plus those in 60 other local communities are using it; and we expect to have all criminal cases moved into the new system by the end of this fiscal year. But to continue developing the system at a viable pace, to protect against cyber threats, and to implement more user-friendly features for our citizens, we are asking you to consider an additional \$2.8 million in funding as you plan Missouri's fiscal 2021 budget.

Treatment courts

Technology is not the only change the public has demanded over the last 200 years. We currently face a period of change ... and criminal justice reform.

Missouri has been on the national forefront in the fight against addiction. When our courts were established 200 years ago, they were designed merely to resolve disputes. Our courts are now called upon to help resolve the most pressing problems facing our society.

This legislative body passed the first treatment court legislation in 1998. Twenty years later, as the state was grappling with the rising opioid epidemic, this body passed legislation standardizing the way our treatment courts operate and ensuring consistency for treatment court participants. You also authorized our treatment courts to accept participants from locations with no local treatment court, vastly expanding the reach of services. In 2019, you restored core funding and appropriated additional funding to expand the full spectrum of treatment court services.

For all of these actions: thank you! As a result of this collaboration among all three branches of government, Missouri now has more than 100 counties served by more than 120 treatment courts – adult, juvenile, family and DWI courts. And because of House Bill 547, which you also passed last year, we will have treatment courts established in every circuit in the state by August 2021.

The judiciary has also been hard at work to continue improving our treatment courts. During 2019, a task force met monthly to formulate rigorous standards ensuring ongoing consistency and effectiveness for our adult treatment courts. The state's treatment court coordinating commission is scheduled to vote on these standards at its quarterly meeting at the end of this month.

Together, we have built a strong foundation from which our state can continue to fight the substance abuse crisis on multiple fronts – alcohol, opioids and, as health officials have forecast, another rise in methamphetamine use.

Perhaps more significant to you will be the fact we now have 15 treatment courts serving the special needs of veterans in 40 counties. Because of legislation you enacted last session, section 478.001.7, RSMo, makes “it ... the public policy of this state to encourage and provide an alternative method for the disposal of cases for military veterans and current military personnel with substance use disorders, mental health disorders, or co-occurring disorders.” For some, these may be just words on paper. But for the 401 veterans who were helped last year through our treatment courts, it represents a win-win for all Missourians by helping those who have served our country regain their lives while reducing crime and improving public safety.

Criminal justice reform

Now, the use of treatment courts is not the only way to improve our criminal justice system. Last year, we made significant changes to our rules governing misdemeanor and felony criminal procedures, including pretrial release, as well as rules governing ordinance violations. Together, these reforms alleviate practices inconsistent with our state constitutional mandates to guarantee bail with sufficient sureties in all but capital offenses and to not require excessive bail or impose excessive fines.

In addition, this legislative body took actions last year that are likely to make a positive impact on the lives of our citizens for many years to come. As a body, you chose to expand the crimes for which an individual can seek an expungement. You also authorized prosecutors to enter into agreements with defendants to send certain criminal cases into diversion programs, allowing them to avoid prosecution altogether when appropriate.

While these reforms are important to improving our criminal justice system, one additional segment needs your attention. I spent a decade as a prosecutor in the city of St. Louis, serving as first assistant in my last year before becoming a trial judge. In most of my cases and those of the prosecutors I supervised, opposing counsel was a public defender. Speaking from the perspective of both a former prosecutor and a former trial judge, I can tell you the system simply does not work without a sufficiently funded and staffed public defender system.

To be sure, *all* attorneys in public service work long, hard hours, and *many* are underpaid and under-recognized. But if criminal cases cannot be moved efficiently through the system because of overloaded attorneys, we risk leaving those who are guilty on the street, those who are not guilty unable to return to being productive members of society, and victims and their families powerless to find closure and move forward with their lives. Together, we all share the burden of our state constitutional mandate demanding that “justice shall be administered without sale, denial or delay.”

21st century workforce

Now, in evaluating the state’s successes during 2019, our governor focused on the importance of workforce development. In the judiciary, we, too, are focused on the 3,600 or so individuals – your constituents – who facilitate the daily business of our state courts.

As the chief justice of the United States said in his year-end report: “[W]e should ... remember that justice is not inevitable. We should reflect on our duty to judge without fear or favor, deciding each matter with humility, integrity, and dispatch ... to do our best to maintain the public’s trust that we are faithfully discharging our solemn obligation to equal justice under law.”

We judges cannot faithfully discharge our duties under the law or maintain public trust and confidence without the support of the thousands of employees who become the faces of justice for so many who walk into our courthouses. It is in support of these employees that we have developed the 21st century workforce plan.

We simply cannot ask these people – who reside in your communities and work in our court system – to live below the value of their service. On their behalf, we thank you for your appropriations over the past few years of salary increases to bring our lowest-paid staff to at least the base of where our classification and compensation study shows they should be. But if we want to retain the good employees we have, and be able to recruit high-quality workers as positions become open, we need to move our staff toward market salary goals.

Conclusion

As we all enter this new year, this new decade, and new century of Missouri courts, together we have the opportunity to look back on how far we have come since Missouri’s first constitution was adopted 200 years ago. After 25 years of working my way through the judiciary – as an associate circuit judge, circuit judge, appellate judge and now Supreme Court judge – fulfilling my family’s legacy of service, I have come to appreciate the Court in its broadest sense, as an institution existing well beyond the seven of us who may sit at any given time.

In every branch of service, we have always had an imperative – to consider the legacy we will leave for all those yet to come. When Missourians 200 years from now look back upon this time, and examine all our works, reforms, and accomplishments, I hope they will find us to have been leaders ... innovators ... collaborators ... who left our state greater than we found it and fully supported those who toiled in and built cooperation among our co-equal branches of government.

Thank you.